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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,547	06/24/2003	Kyle Bateman	2280.ACTI.NP	1226
27472	7590	07/21/2008	EXAMINER	
BATEMAN IP LAW GROUP			CHAMBERS, TROY	
P.O. BOX 1319				
SALT LAKE CITY, UT 84110			ART UNIT	PAPER NUMBER
			3641	
			MAIL DATE	DELIVERY MODE
			07/21/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/602,547	BATEMAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Troy Chambers	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 April 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,5,7,12-26,36-39 and 50-56 is/are pending in the application.
- 4a) Of the above claim(s) 19, 20, 23-26, 52, 53 and 56 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,5,7,12-18,21,22,36-39,50,51,54 and 55 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. In response to a previous restriction requirement, applicant had elected to prosecute the species defined by Figure 3.
2. Claims 19 and 20 are withdrawn as being directed to a non-elected invention. The mounting bracket of Fig. 3 does not disclose an L-shaped recess.
3. Claims 23-26 are withdrawn as being directed to a non-elected invention. In Figure 3, none of the facing or backing strips are generally U-shaped. Claims 24-26 directly or indirectly depend from claim 23.
4. Claims 52 and 53 are withdrawn as being directed to a non-elected invention. In Figure 3, there is no disclosure of a deceleration medium comprising gravel or chopped rubber.
5. The remaining pending claims are 1, 2, 5, 7, 12-18, 21, 22, 36-39, 51, 54, and 55.

### ***Continued Examination Under 37 CFR 1.114***

6. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/22/2008 has been entered.

### **Claim Interpretation**

7. Claims limitations directed to the actions of a bullet will receive little, if any, weight. A bullet is not part of the claims and will not be interpreted as being so. As far as direction of travel is concerned, a bullet can be fired from within a vehicle (accidental discharge, suicide) or outside (top, bottom, side, etc.). Also, a bullet can be fired from a gun or tossed by hand. There are bullets that range from those that are incapable of penetrating human skin (a paintball is a bullet) to a 50 caliber bullet capable of penetrating armor.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 12-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 12 requires: "so that a bullet passes through the bullet containment frame prior to impacting one of the two pieces of steel plate." However, this is only possible if the bullet strikes boards 172 then 2x4 164 which is described in the specification as the components of the bullet containment frame. A bullet striking board 172 and outside of 2x4 164 would fail this limitation.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 recites the limitation "the bolt". There is insufficient antecedent basis for this limitation in the claim since claim 1 recites "a plurality of bolts." It is not clear what bolt applicant is referring to.

12. Claim 12 recites the phrase "wherein *at least some* of the plurality of bolts do not hold the bullet containment frame to the mounting bracket" (Emphasis added). The "*at least some*" limitation is not understood since the specification and drawings (elected Fig. 3) disclose that none of the bolts hold the bullet containment frame to the mounting bracket.

#### ***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 12, 17, 18, 21, 22, 39, 50 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5663520 Ladika.

15. With respect to claim 12, Ladika discloses a modular ballistic wall comprising plate steel 60, 84; a facing strip 114; mounting bracket 246; a plurality of bolts and nuts 248, 252; and, bullet containing frame 20 (the vehicle). A bullet fired from a rooftop overlooking the vehicle 20 and penetrating therethrough would first impact the vehicle

(containment frame) and then the steel plates. The nuts and bolts do not operate to hold the frame (entire vehicle body) to the bracket 246.

16. With respect to claim 17, mounting bracket 246 has 4 arms that make up its structure as well as "arm" 254.

17. With respect to claim 18, the rectangular shape of tube 246 could be interpreted as a plurality of attached U-shapes.

18. With respect to claim 21, Ladika discloses first and second pieces of plate steel as discussed above. While the pieces of steel overlap one another, the edges are considered to be adjacent to one another since the term adjacent is defined as 1: not distant; nearby (<http://www.merriam-webster.com/dictionary/adjacent>). Moreover, the holes formed in the metal pieces form edges that are adjacent. The facing and backing strips are anticipated by 114 and 250 or 264. The at least one arm could be fastener 254 or bolt 248 or bracket 246. The bullet containment frame is the vehicle itself which is clearly shown in Figures 1 and 2 as comprising sheets of material. A bullet could be fired from anywhere inside or outside of the vehicle to address the last limitation directed to bullet travel.

19. With respect to claim 21, any one of 248, 254 or 246 has an arm that is "attached to" the facing strip.

20. With respect to claim 38, Ladika discloses the metal plates, facing strip and bullet containment frame as discussed above. Bolts 254 attaches the facing strip 114 to the metal plates 60, 84 but do not appear to extend into the bullet containment frame.

21. With respect to claim 50, Ladika discloses steel plates 60, 84. Facing strip is element 114. Mounting bracket remains element 250. The plurality of sheets is disclosed as being the vehicle parts of Fig. 2 which are separated by mounting bracket 250 at that location.

22. Claims 12, 13, 16, 17, 21, 22, 36, 37, 38, 39, 50 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Figure 7 of US 5822936 issued to Bateman.

23. With respect to claim 12, Bateman discloses two pieces of plate steel 210; facing strip 214; mounting bracket 238; bolt and nuts 222, 234; and, bullet containment frame 250, 264, 268. At col. 7, lines 31-32, Batement describes the connection of the nut and bolt as follows: "A bolt 222 extends from the facing strip 214 through the hole 218 in the backing strip 230." This disclosure says nothing about the bolt extending through the containment frame (250, 264, 268). Therefore, the attachment of the bolts to the facing strip and mounting bracket is not dependent upon the attachment of the containment frame which is apparently attached by some other method.

24. With respect to claim 13, Bateman discloses wood post 250 which is attached to the facing strip which is attached to the steel plates which is attached to the bracket. Therefore, the wood post is attached to the mounting bracket.

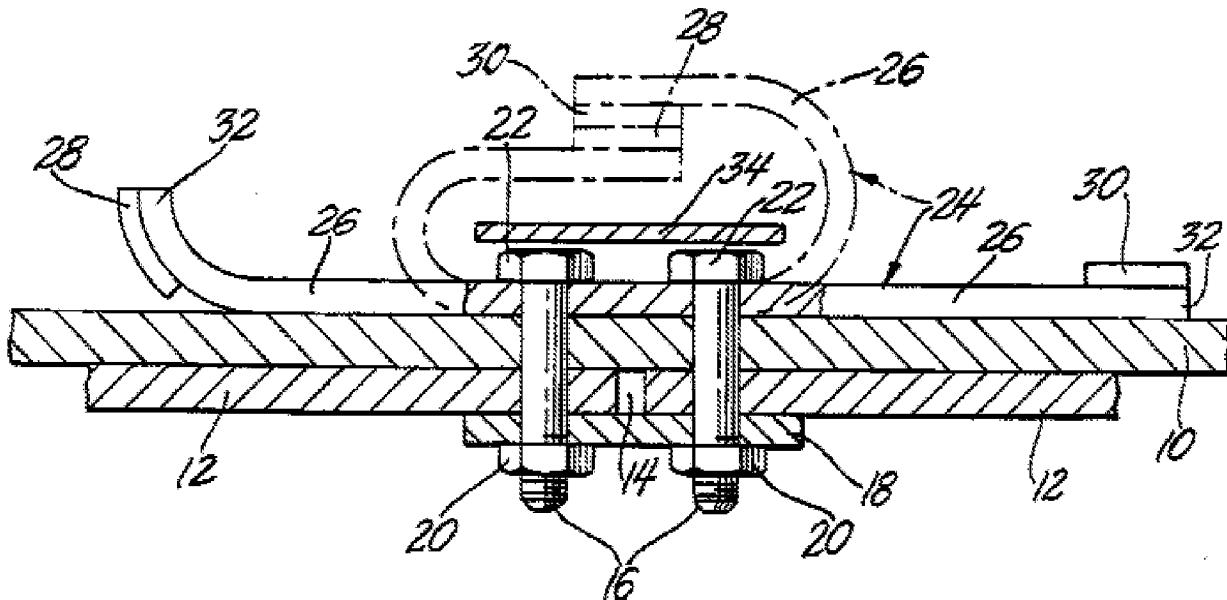
25. With respect to claim 16, Bateman discloses a wood post 250. The manner of making the post is of no consequence to an apparatus claim.

26. With respect to claim 17, Bateman discloses mounting bracket arm 238.

27. With respect to claim 21, Bateman discloses a modular ballistic wall as discussed above with the backing strip identified at 230.

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28. With respect to claim 22, the at least one arm is identified as described above.
29. With respect to claims 36, 37, 38 and 39, refer to claim 12 where it was explained that the bolts 222 extended through the facing and backing strips and not the wood post 250. The wood post is attached to the facing strip 250 so it is inherently attached to the attachment mechanism.
30. With respect to claim 50, an altered but valid interpretation of Bateman is necessary. In this case, the plurality of steel plates are the same, namely elements 210. The facing strip is 230 but the mounting bracket is now identified at 250. The plurality of sheets is 264, 268 and it can be seen that the mounting bracket separates the sheets from the strip. Bullet deceleration medium can be found at 260.
31. Claims 12, 17, 18, 21, 22, 39, 50 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5600084 issued to Gonzalez.



32. Gonzalez discloses a modular ballistic wall, comprising:

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a.	first and second steel plates (steel shading)	12
b.	facing strip	14
c.	a backing strip	34
d.	an arm/mounting brackets	26
e.	bullet containment frame	10
f.	holes	
g.	bolts	16
h.	nuts	20

***Claim Rejections - 35 USC § 103***

33. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

34. Claims 1, 2, 5, 7 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ladika. Ladika discloses a modular ballistic wall as discussed above including support post 254. Ladika does not disclose a plurality of slots. In the Office action mailed 04/18/07, the examiner took Official Notice of such a feature and carries said notice forward to the instant Office Action.

35. Claims 14, 15 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bateman. Bateman discloses a modular ballistic wall as discussed above. Bateman discloses that the mounting bracket is attached to the wood post, however,

Batement does not disclose the exact means in which the mounting bracket is attached to the wood post. The examiner takes Official Notice that means for attachment are known in the art including glue, nails, screws, etc. At the time of the invention, while Bateman is not specific as to how the wood post is attached, it would have been obvious to the skilled artisan to employ one of the means identified by the examiner to mate the two elements together.

***Conclusion***

36. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Chambers whose telephone number is 571-272-6874 and whose email address is troy.chambers@uspto.gov. The examiner can normally be reached on M-F from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Troy Chambers/  
Primary Examiner  
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